
In the Matter of:

HOWARD G. CASEY,
Petitioner

HUDBCA No. 03-C-CH-AWG08
Claim No. 7-80199185

Howard G. Casey
35487 Townley Drive
Sterling Heights, MI 48312

Petitioner, Pro se

Michael Berke, Esq.
U.S. Department of Housing and
Urban Development
Office of Assistant General Counsel
for Midwest Field Offices
77 West Jackson Boulevard, Room 2604
Chicago, IL 60606-3507

For the Secretary

DECISION ON ADMINISTRATIVE WAGE GARNISHMENT

Background

Petitioner has requested a hearing concerning the proposed administrative wage garnishment relating to a debt allegedly owed to the U.S. Department of Housing and Urban Development ("HUD"). The request for a hearing was received by the HUD Board of Contract Appeals on November 14, 2002. This alleged debt resulted from a defaulted loan which was insured against non-payment by the Secretary of HUD. This hearing is authorized by the Debt Collection Improvement Act of 1996, as amended, (31 U.S.C. § 3720D) and applicable Departmental regulations. The administrative judges of this Board have been designated to determine whether this debt is past-due and enforceable against Petitioner and, if so, whether the Secretary may collect the alleged debt by administrative wage garnishment. 24 C.F.R. § 17.170(b). Pursuant to 31 C.F.R. § 285.11(f)(10)(i), issuance of a wage withholding order was stayed until the issuance of the written decision.

This hearing is conducted in accordance with the procedures set forth at 31 C.F.R. § 285.11, as authorized by 24 C.F.R. § 17.170, and is limited to a review of the written record. The Secretary has the burden of proof of the existence or amount of the debt. 31 C.F.R. § 285.11(f)(8)(i). Petitioner has the burden of proving by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect. In addition, Petitioner may present evidence that the terms of the repayment schedule are unlawful, would cause a financial hardship to Petitioner, or that collection of the debt may not be pursued due to operation of law. 31 C.F.R. § 285.11(f)(8)(ii).

Petitioner contends only that administrative wage garnishment of up to 15% of his disposable pay would cause financial hardship.

Summary of Facts and Discussion

There is no dispute on the existence or amount of the debt at issue. Petitioner defaulted on an installment note for a home improvement loan that was insured against non-payment by the Secretary of HUD pursuant to Title I of the National Housing Act, 12 U.S.C. § 1703. After Petitioner's default, the note was assigned to the Secretary of HUD. Petitioner is indebted on the note in the following amounts: \$19,563.72 as the unpaid principal balance as of October 30, 2002; \$880.38 as the unpaid interest at 6% per year through October 30, 2002; \$613.32 as a U.S. Department of Treasury Debt Management Service Fee; \$5,111.02 as a private collection agency fee; and interest on the principal balance from October 30, 2002 at 6% per year, until the debt is paid. (Secretary's Statement, Exhibits A, B, C.)

The only proposed repayment schedule in this case is the Secretary's stated intent to seek the maximum administrative wage garnishment allowed by law of Petitioner's disposable pay unless the maximum amount would cause a financial hardship to Petitioner and a lower garnishment amount is ordered in this case. (Supplemental Declaration of Lester J. West, December 10, 2002.) While financial hardship does not invalidate a debt or release a debtor from the obligation to pay it, Raymond Kovalski, HUDBCA No. 87-1681-G18 (December 8, 1986), financial hardship is relevant to the amount of administrative wage garnishment that will be allowed. 31 C.F.R. §§ 285.11(f)(2) and (f)(10)(iii).

In support of his claim of hardship, Petitioner has submitted a copy of his pay statement from his employer, Daimler Chrysler Corporation, for October 21, 2002 through November 3, 2002, and an undated document entitled "Monthly Expenses" prepared by Petitioner. No documentary evidence was submitted by Petitioner to support his claimed monthly expenses.

Petitioner's disposable pay for purposes of administrative wage garnishment is defined as that part of his compensation remaining after the deduction of health insurance premiums and any amounts required by law to be withheld, which include social security taxes and withholding taxes, but not any amount withheld pursuant to a court order. 31 C.F.R. § 285.11(c). Petitioner received a salary of \$2,350.00 and overtime pay of \$1,410.00, totaling \$3,760.00 for the period October 21, 2002 through November 3, 2002. A total of \$805.96 was withheld from his compensation for Federal, State and local income tax, and Social Security. He also had union dues of \$56.75 withheld, but that deduction was not required by law to be made, according to the pay statement submitted by Petitioner. Petitioner's disposable pay covered by the pay statement

he submitted was \$2,954.04 for purposes of administrative wage garnishment. The pay statement also indicates that Petitioner had earned taxable income of \$79,067.69 for the year to date as of November 3, 2002, and that he is married. Based on Petitioner's taxable earnings for the year to date as of November 3, 2002, I find that his earnings for the period covered by the single pay statement he submitted are fairly typical of his earnings in 2002, and that his annual earnings for 2002 before deductions should be approximately \$94,881.00.

I find Petitioner's claimed "Monthly Expenses" totaling \$5,975.00 to be lacking in credibility for many of the items listed. The unsupported "Monthly Expenses" submitted by Petitioner appears to be either overstated or reflects a living standard that can be adjusted downward to repay Petitioner's substantial unpaid debt to HUD. Although Petitioner does not list his dependents or indicate whether his spouse has income that is used for monthly household expenses, the listing for school supplies and school lunches indicates that at least one school-age child lives in Petitioner's household. Petitioner lists high estimated monthly auto expenses of \$1530.00, including \$500.00 for gas and maintenance, \$350.00 for insurance, and \$390.00 and \$290.00 respectively for two automobile leases. Petitioner also lists \$1,000.00 for food other than "school/work lunches," which are listed as costing approximately \$300.00 per month. These food cost estimates appear to be inflated, but, if accurate, could be reduced substantially. Petitioner also lists \$400.00 per month for tobacco expenses, which is so unrealistic that it calls into question the veracity and reliability of the entire "Monthly Expenses" listing, except for rent, utilities, cable television, insurance, and union dues.

CONCLUSIONS

After a review of the record in this proceeding, I find that the debt at issue is past-due and enforceable against Petitioner in the amounts claimed by the Secretary. Furthermore, based upon the credible financial documentation submitted in this case, I find that a wage garnishment of up to 15% of Petitioner's disposable pay would not cause a financial hardship to Petitioner.

ORDER

The debt claimed by the Secretary is past-due and enforceable against Petitioner in the amounts claimed by the Secretary. The Secretary is authorized to pursue recovery of this debt by means of administrative wage garnishment in an amount up to 15% of the disposable pay of Howard G. Casey.

Jean S. Cooper
Administrative Judge

December 27, 2002